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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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05/13/2008

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EXAMINER

LEVINE, ADAM L

ART UNIT

PAPER NUMBER

3625

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/681,916	Applicant(s) MASERUKA, GEOFFREY	
	Examiner ADAM LEVINE	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10 October 2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: The second complete sentence on page 2 of the specification needs to be rewritten. Appropriate correction is required.

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Drawings

2. The drawings are objected to because in figs.1-9, lines, numbers and letters are not uniformly thick and well defined, numbers and reference characters are not plain and legible. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Objections

3. A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim.

A claim which depends from a dependent claim should not be separated by any claim which does not also depend from said dependent claim. It should be kept in mind that a dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n). Claim 4 depends from dependent claim 2, claim 3 does not depend from claim 2. Claim 18 depends from dependent claim 16, claim 17 does not depend from claim 16. Claim 19 depends from dependent claim 17, claim 18 does not depend from claim 17. Claim 20 depends from

dependent claim 16, claims 17 and 19 do not depend from claim 16. Claim 21 depends from dependent claim 17, claims 18 and 20 do not depend from claim 17.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 1-9 and 13-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Regarding claim 1, it cannot be determined whether the information is being registered, or if it is the supplier of the information that is being registered. In other words is it the supplier of the products and information that is being registered, or is it both the supplier of products and the information with regard to said products that are being registered? A similar problem is present with regard to the next element, i.e., registration of vendors and information, or registration of vendors with shelf space and information.

Claims 1-9 and 13-21 provide for the use of various subsystems, but, since the claims do not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-9 and 13-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims provide for the use of various subsystems, but, since the claims do not set forth any concrete and tangible system elements or steps involved in a method/process, it is unclear what apparatus, process, or other statutory class applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced. These claims recite the use of elements that are themselves abstractions.

The claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Mere recitation in the preamble (i.e., intended use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea. System components as claimed (and means) are lacking structural specificity. For subject matter to be statutory, the claimed process must be limited to a practical application of the abstract idea or mathematical algorithm. See *In re Alappat* 33 F.3d at 1543, 31

USPQ2d at 1556-57 (quoting *Diamond V. Diehr*, 450 U.S. at 192, 209 USPQ at 10). A claim is limited to a practical application when the method, as claimed, produces a concrete, tangible and useful result: i.e. the method recites a step or act of producing something that is concrete, tangible and useful. See *AT&T v. Excel Communications Inc.*, 172 F.3d at 1358, 50 USPQ2d at 1452.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker et al. (US Patent No. 7,340,419 B2; prior publication 2002/0133407 A1).

Walker teaches all the limitations of claims 1-21. For example, Walker discloses web based (see at least column 4 lines 45-55) systems and methods for marketing products comprising registration of suppliers and information regarding products, registering of vendors and their information, requesting display of products by vendors, and the transacting of sales of products with compensation to vendor and supplier. Please note: the information describing suppliers, vendors, products, etc., is descriptive material and is not functionally involved in the recited steps of the method. Because it has no functional role in the method it is non-functional descriptive material. This descriptive material will not distinguish the claimed invention from the prior art in terms

of patentability, see *In re Gulack*, 703 F.2d 1381 , 1385, 217 USPQ 401, 404 (Fed. Cir. 1983). MPEP 2106). Walker further discloses:

- providing information on a product and a supplier of said product: registration of suppliers of products and information with respect to said products, cataloguing specifications of products and identification with respect to product contact persons (see at least figs.1-2, 4-7; column 3 lines 38-46, column 5 lines 29-47, column 6 lines 1-7, column 7 lines 4-10); supplier registration includes a first section for supplier registration information (see above), a second section for rules of use, a third section which generates username and password information for said supplier (see at least column 3 lines 3-11, column 8 lines 35-44);
- providing information on vendors: with available shelf space to display said product, said information including information on available shelf space and cost of said shelf space, registration of vendors with shelf space available to display said products and information with respect to available shelf space and associated fees, registration of vendors and vendor contact information, section for rules of use and a section that generates username and password information for said vendor (see at least fig.6, column 2 lines 14-22, column 3 lines 3-11, column 8 lines 35-44, 50-61. Please note: providing and registering vendors and information concerning the vendors is being given functional weight by the examiner, however, the descriptive information within each detail maintained is nonfunctional descriptive matter. For example, the functional aspect of the information is that it has bearing on the ability of the vendor to perform, however,

the specific information is nonfunctional because it does not affect the function of the systems and methods. Nonetheless the examiner believes most if not all of the information listed above is in fact disclosed in the reference);

- negotiating with said vendors for desired shelf space: the supply and display of said product and payment for the display and sale of said products, suppliers and vendors negotiate, contact persons negotiate (see at least abstract, figs.5,7; column 2 lines 14-22, 48-54; column 3 lines 3-11); messaging systems to permit vendors and suppliers to send messages to each other (see at least column 4 lines 45-54, column 5 lines 1-14, column 6 lines 1-21);
- supplying said products to said vendors for display and sale: viewing registered products by location and category (see at least abstract, figs. 5,7; column 2 lines 14-22, 48-67; column 9 lines 13-28);
- accounting for the sale of said products by said vendors: account section for maintaining account of products shipped, cost of shelf space, sales information, incoming products, inventory and sales, payments, product information, outgoing product section, sales report section, product returns section, direct sales order section and a messaging section, services and fee section, incoming product section, inventory and sales section (see at least fig.2, column 4 lines 45-54, column 5 lines 1-14, column 6 lines 1-21, column 8 lines 20-34, column 9 lines 34-45. Please note: maintaining accounts is being given functional weight by the examiner, however, the descriptive information within each detail maintained is

nonfunctional descriptive matter. Nonetheless the examiner believes most if not all of the information listed above is in fact disclosed in the reference);

- providing supplier with a predetermined percentage of said sales: (see at least figs.3,5; column 4 lines 55-67, column 6 line 58- column 7 line 3).
- subsystems are operably interconnected: system is web based, maintained by a web provider (see at least column 4 lines 45-60, column 5 lines 29-48, column 7 lines 33-46. Please note: the identity of the entity that maintains the system is not patentable subject matter, nor is it patentably distinguishing. If it were, any entity desiring to use a previously patented invention could simply draft an application naming themselves as the user);
- direct sales of products: (see at least column 2 lines 55-67, column 3 lines 12-19).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ADAM LEVINE whose telephone number is (571)272-8122. The examiner can normally be reached on M-F, 8:30-5:00 Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571.272.6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3625

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey A. Smith/
Supervisory Patent Examiner, Art
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Adam Levine
Patent Examiner
May 8, 2008
/Adam Levine/
Examiner, Art Unit 3625